

EPA Comment #21 (from EPA letter) and EPA Issue #15

EPA Comment #21: Section 5.2.3 describes the proposed wetland mitigation plan. EPA previously commented on the proposed mitigation ratios, and supports the mitigation ratios proposed in USACE's May 29, 2013 Draft Memorandum on *The Application of the Federal Mitigation Rule and St. Paul District Policy Guidance on Compensatory Mitigation*, as described on page 5-316. The SDEIS describes the proposed ratios, but also states, "The determination of final mitigation credits ... would be determined during permitting" (p 5-224).

Recommendation: The FEIS should provide a status update on development of final wetland mitigation credits. EPA will work with USACE during CWA Section 404 permitting to determine the final wetland mitigation credits needed, including mitigation for indirect impacts.

EPA Issue #15: The proposed wetland mitigation sites may not provide sufficient credits for the proposed direct and indirect wetland impacts.

- Action: PolyMet is currently looking into prospective wetland mitigation options. Once this review is complete, EPA and USACE will determine if the proposed sites and acreage are sufficient to cover direct and indirect wetland impacts.

EPA Comment #21 Response

The USACE has determined—based on the mitigation plans, information gathered on site, and review of the monitoring reports—that the three mitigation sites selected (Aitkin, Hinckley, and Zim) and the wetland mitigation credits generated at these sites would be acceptable for use in compensating for direct wetland losses. The USACE has not made a final decision on the mitigation ratios that would be required to compensate for direct wetland impacts; however, if fully successful, it is likely these mitigation sites would generate sufficient credits to compensate for the 940 acres of direct and fragmented wetland impacts. In the event that not all of the credits generated at these sites are utilized to compensate for direct wetland impacts, any excess credits could be used to compensate for indirect losses (USACE 2015a). The FEIS (see Section 5.2.3.3) includes the proposed direct compensatory mitigation credits and ratios for the NorthMet Project Proposed Action (see FEIS Tables 5.2.3-18, 5.2.3-19, and 5.2.3-20), which are based on the federal guidance policies and state replacement ratio rules. The amount of credit generated by the mitigation sites would ultimately be determined by the permitting agencies. This would be based on the extent to which the sites meet the target goals established during permitting. These include, among other things, restoration of wetland appropriate hydrology and the establishment of a target plant community or type. Financial assurances for the direct wetland impact mitigation would be required until success of the mitigation sites can be assured. While this wetland mitigation is expected to be approved and constructed in advance of any authorized wetland impacts, it is unclear whether these sites would be well enough established for financial assurances to be waived. The USACE would also consider the application of financial assurances for potential indirect wetland effects and monitoring. Both the USACE and state would require consideration of financial assurances during the permitting process.

The NorthMet Project Proposed Action is estimated to directly impact 913.8 acres of wetlands. Depending on the location, type, and timing of compensatory mitigation, the minimum required

amount of replacement wetlands for direct impacts could range from 913.8 acres up to 1,827.6 acres (i.e., 1:1 up to 2:1 compensation ratios). In addition, compensatory mitigation for the 26.9 acres of wetland fragmentation would also be provided up front. The USACE St. Paul District guidance allows for in-kind, in-place, and in-advance incentives to reduce the recommended base ratios and these would be considered at the time of permitting.

See EPA Comment Response #17, part 1, for more information on indirect mitigation, monitoring, and adaptive management.

USACE. 2015a. *Letter from USACE to Jennifer Saran, PolyMet Mining. Re: Proposed Wetland Mitigation Sites for the NorthMet Project.* Operations Regulatory (MVP-1999-5528-JKA). January 13, 2015.